Arbp(L)622-06

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Arbitration Petition (L) No. 622 of 2006
in
Arbitration Petition no. 99 of 2006

M/s. Juliet Products Ltd. .. Petitioner
V/S
The Greater Bombay Cooperative
Bank Ltd. and anr. ... Respondents
And
M/s. Taloja Conductors P.Ltd. & anr. .. Applicants.
Mr. Pankaj Kawli i/b. Dr. M.Shah Alan Khan for petitioner
None for respondents

CORAM: **D.G. KARNIK J**.
DATE: February , 21, 2007

P.C.:

1. Heard counsel for the applicant / petitioner.

2. This petition is filed by the applicants for setting aside the consent terms recorded between the petitioner and the respondent no.1 in Arbitration Petition No.99 of 2006 on 9th March 2006 by this court. In my view, the application is wholly misconceived for the reasons stated below.

3. The applicant no.1 is the principal borrower and the applicant no.2 is the director of applicant no.1 company.

Applicant no.1 had borrowed of money from the respondent no.1 and was a defaulter in repayment. The respondent no.1 bank, therefore, initiated action under section 101 of the Maharashtra Cooperative Societies Act 1960 as well as the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "Securitisation Act"). Accordingly the respondent no.1 bank, after notice to the applicants, took possession of the property belonging to the applicant no.1 (for short ' he property') and proposed to sell it by auction / private contract. Public notice of the proposed sale was also issued in the newspapers. The petitioner made an offer to purchase the property and it appears that a contract was entered entered into between the petitioner and the respondent no.1 regarding the sale of the property. It appears that at that stage the applicant no.1 approached the bank with an offer of settlement of its dues and negotiations were in progress. The respondent no.1 bank therefore informed the petitioner that it was not possible to sell the property to the petitioner. Feeling

aggrieved by this communication and apprehending that the respondent no.1 would commit breach of the agreement to sell the petitioner moved this court under section 9 of the Arbitration and Conciliation Act, 1996 and sought an injunction restraining the respondent no.1 from selling the property to any third person. In that petition (initially numbered as Arbitration Petition lodging no. 622 of 2006 and subsequently renumbered as Arbitration Petition No. 99 of 2006), a compromise was reached between the petitioner and the respondent no. 1 under which the respondent no.1 agreed to sell and transfer the property to the petitioner. Accordingly consent terms were filed in the said arbitration petition by the petitioner and the respondent no.1 in the court. This court (Coram: D.K. Deshmukh J.) accepted the said consent terms and passed an order in terms of the consent terms. That order accepting the consent terms and the order in terms of the consent terms passed by the court is impugned by the applicants by this application.

4. At the outset it must be mentioned that the applicants have

filed a writ petition, bearing writ petition lodging No. 1957 of 2006, challenging the very consent terms. However, counsel for the petitioner submits that the reliefs claimed in writ petition lodging No. 1957 of 2006 are identical with the reliefs claimed in this application. The writ petition was filed earlier and is still pending. In my view, during the pendency of the writ petition, a second proceeding by way of an application under the Arbitration Act for setting aside the consent terms is not maintainable.

5. It may be noted that the applicants are not parties to the consent terms recorded in Arbitration Petition No. 99 of 2006. Obviously they are not bound by the said consent terms. It is open to them to take such steps as are available to them to challenge the said consent terms or claim that the consent terms, to which they are not parties, are not biding on them. In fact the applicants have taken steps for challenging consent terms by filing the writ petition lodging No. 1957 of 2006. The Arbitration Act does not contemplate an application by a third party for setting aside the consent terms reached

between the parties to the proceedings to which he is not a party. The arbitration petition no.99 of 2006 was filed on the basis of an agreement allegedly entered into between respondent no.1 and the petitioner for sale of the suit property. The applicants were not a party to the said agreement. Obviously the applicants were not bound by the said agreement. It was open to the petitioner and respondent no.1 in the arbitration petition to enter into a settlement. That settlement would not affect the rights, if any, of the applicants in the property.

6. In substance, what the applicants are seeking by this petition is to challenge the action taken by the respondent no.1 under the Securitisation Act of effecting the sale. This is wholly outside the purview of the Arbitration Act. In the circumstances the petitioner cannot challenge the said consent terms by means of the present application. For these reasons the application is dismissed summarily.

(D.G. KARNIK J.)